IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.816 OF 2004

WITH

CIVIL APPLICATION NO. 1117 OF 2004

Samsuddin Chand Shaikh.
R/at 688, Shivajinagar,
Pulachi Wadi, Deccan Gymkhana,
Pune - 4. ... Appellant.

V/s.

1. Mr. Pandurang More,
2. Mr. Vitthal Babanrao More
3. Mr. Pandurang Khandoba Dhavale,
4. Mr. Dyaneshwar Khandoba Dhavale,
4. Mr. Shamrao Khandoba Dhavale. ... Respondents.

Shri Shiv Motriya, advocate for Appellant.

Shri G.S.Godbole, advocate for Respondent No.1 and 2.

Shri Niraj Shelupuriya, advocate for Respondent Nos. 3 to 5.

Coram: Smt.Nishita Mhatre, J.
Dated: 20th October, 2004.

P.C.:

1. The Trial Court has, by a temporary injunction, restrained the defendants from making any encroachment on the suit property or any part thereof and from dispossessing the plaintiffs from the suit property without following due process of law.

2. The learned advocate for the appellant submits that observations made by the learned Trial Court that the plaintiff is in possession of the suit property CTS No.1368B on account of adverse possession which he

claimed against the erstwhile owners of the suit property who are respondent No.3 to 5 in the present appeal, is contrary to the material on record. According to the learned advocate for the appellant, the contention ought to have been rejected at the interim stage since there were no pleadings to that effect on record. He placed reliance on certain Judgments of the Apex Court to support his argument that the case of adverse possession must be made out by mentioning specific dates from which the plaintiff came into possession of the suit premises by adverse possession.

3. It appears that in respect of the suit structure, Pune Municipal Corporation issued notice for demolition of the same as according to them, it was an illegal structure. It appears that the structure covers the lane which is between the plot of land owned by the plaintiffs i.e. CTS No.698 and CTS 1368B.

4. Having heard the learned advocates for the parties, I am of the view that findings of the trial court are prima facie. While deciding the suit after recording evidence the Trial Court will naturally remain uninfluenced by the prima facie findings. The trial court has merely restrained the defendant/appellant from encroaching on the suit property and from dispossessing the plaintiff without following due process of law, pending the suit. In view of this, appeal dismissed.

No order as to cost.

5. In view of dismissal of the A.O., Civil Application does not survive. Hence C.A. dismissed accordingly.

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